

## Chapter 6

### PENALTIES AND DEBT COLLECTION

#### I. General Penalty Policy.

The penalty structure in Chapter 88.14 of the Iowa Code is designed primarily to provide an incentive for preventing or correcting violations voluntarily, not only to the cited employer, but to other employers. While penalties are not designed as punishment for violations, the Legislature has made clear its intent that penalty amounts should be sufficient to serve as an effective deterrent to violations.

Proposed penalties, therefore, serve the public policy purpose intended under the Code; and criteria approved for such penalties by the Labor Commissioner are based on effectuating this purpose.

The penalty structure described in this chapter is part of OSHA's general enforcement policy and shall normally be applied as set forth below. If, in a specific case, the OSHA Administrator determines that it is warranted to depart from the general policy in order to achieve the appropriate deterrent effect, the extent of the departure and the reasons for doing so should be fully explained in the case file.

#### II. Civil Penalties.

##### A. Statutory Authority for Civil Penalties.

Chapter 88.14 provides the Labor Commissioner with the statutory authority to propose civil penalties for violations of the Code. Civil penalties advance the purposes of the Code by encouraging compliance and deterring violations. **Proposed penalties** are the penalty amounts OSHA issues with citation(s).

1. 88.14(1) of the Code provides that any employer who willfully or repeatedly violates the Code may be assessed a civil penalty of not more than \$70,000 for each violation, but not less than \$5,000 for each willful violation.
2. 88.14(2) provides that any employer who has received a citation for an alleged violation of the Code which is determined to be of a serious nature shall be assessed a civil penalty of up to \$7,000 for each violation.
3. 88.14(3) provides that, when the violation is specifically determined not to be of a serious nature, a proposed civil penalty of up to \$7,000 may be assessed for each violation.

4. 88.14(4) provides that any employer who fails to correct a violation for which a citation has been issued, may be assessed a civil penalty of not more than \$7,000 for each day during which such failure or violation continues.
5. 88.14(9) provides that, when a violation of a posting requirement is cited, a civil penalty of up to \$7,000 shall be assessed for each violation.

*NOTE: While OSHA proposes penalties, the Employment Appeal Board assesses penalties.*

**B. Appropriation Act Restrictions.**

In providing funding for OSHA, Congress has placed restrictions on enforcement activities regarding two categories of employers: small farming operations and small employers in low-hazard industries. The Appropriations Act contains limits for OSH Act activities on a year-by-year basis.

*NOTE: See CPL 02-00-051, Enforcement Exemptions and Limitations under the Appropriations Act, issued May 28, 1998, for additional information. Appendix A of that directive contains the list of low-hazard industries, which is updated annually.*

**C. Minimum Penalties.**

The following policies apply:

1. The proposed penalty for any willful violation shall not be less than \$5,000. The \$5,000 penalty is a statutory minimum and not subject to administrative discretion. This minimum penalty applies to all willful violations, whether serious or other-than-serious.
2. When the proposed penalty for a serious violation (citation item) would amount to less than \$100, a \$100 penalty shall be proposed for that violation.
3. When the proposed penalty for an other-than-serious violation (citation item), or a regulatory violation other than a posting violation, would amount to less than \$100, no penalty shall be proposed for that violation.

4. When the proposed penalty for a posting violation (citation item) would amount to less than \$100, a \$100 penalty shall be proposed for that violation.

**D. Maximum Penalties.**

- The civil penalty amounts included in Chapter 88.14 are generally maximum amounts before any permissible reductions are taken.
- Table 6-1 below summarizes the maximum amounts for proposed civil penalties:

**Table 6-1: Maximum Amounts for Civil Penalties**

Type of Violation	Penalty Maximum
Serious	\$7,000 per violation
Other-Than-Serious	\$7,000 per violation
Willful or Repeated	\$70,000 per violation
Posting Requirements	\$7,000 per violation
Failure to Abate	\$7,000 per day unabated beyond the abatement date [generally limited to 30 days maximum]

**III. Penalty Factors.**

Section 17(j) of the Act provides that penalties shall be assessed giving due consideration to four factors:

- ▶ The **gravity** of the violation;
- ▶ **Size** of the employer's business;
- ▶ The **good faith** of the employer; and
- ▶ The employer's **history** of previous violations.

**A. Gravity of Violation.**

The gravity of the violation is the **primary consideration** in determining penalty amounts. It shall be the basis for calculating the basic penalty for serious and other-than-serious violations. To determine the gravity of a violation, the following two assessments shall be made:

- ▶ The **severity** of the injury or illness which could result from the alleged violation.

- The **probability** that an injury or illness could occur as a result of the alleged violation.

## 1. **Severity Assessment.**

- The classification of an alleged violation as serious or other-than-serious is based on the severity of the potential injury or illness and is the first step. The following categories shall be considered in assessing the severity of potential injuries or illnesses:

### a. **For Serious:**

- **High Severity:** Death from injury or illness; injuries involving permanent disability; or chronic, irreversible illnesses.
- **Medium Severity:** Injuries or temporary, reversible illnesses resulting in hospitalization or a variable but limited period of disability.
- **Low Severity:** Injuries or temporary, reversible illnesses not resulting in hospitalization and requiring only minor supportive treatment.

### b. **For Other-Than-Serious:**

**Minimal Severity:** Although such violations reflect conditions which have a direct and immediate relationship to the safety and health of employees, the most serious injury or illness that could reasonably be expected to result from an employee's exposure would not be low, medium or high severity and would not cause death or serious physical harm.

## 2. **Probability Assessment.**

The probability that an injury or illness will result from a hazard has no role in determining the classification of a violation, but does affect the amount of the proposed penalty.

### a. Probability shall be categorized either as greater or as lesser.

- **Greater Probability:** Results when the likelihood that an injury or illness will occur is judged to be relatively high.

- **Lesser Probability:** Results when the likelihood that an injury or illness will occur is judged to be relatively low.

**b. How to Determine Probability.**

- The following factors shall be considered, as appropriate, when violations are likely to result in injury or illness:
  - - Number of employees exposed;
    - 
    - Frequency of exposure or duration of employee overexposure to contaminants;
    - Employee proximity to the hazardous conditions;
    - Use of appropriate personal protective equipment;
    - Medical surveillance program;
    - Youth and inexperience of employees, especially those under 18 years old; and
    - Other pertinent working conditions.
  - **EXAMPLE 6-1:** Greater probability may include an employee exposed to the identified hazard for four hours a day, five days a week. Lesser probability may be present when an employee is performing a non-routine task with two previous exposures within the previous year and no injuries or illnesses are associated with the identified hazard.

**c. Final Probability Assessment.**

All of the factors outlined above shall be considered in determining a final probability assessment.

When adherence to the probability assessment procedures would result in an unreasonably high or low gravity, the assessment may be adjusted at the discretion of the Administrator as appropriate. Such decisions shall be fully explained in the case file.

**3. Gravity-Based Penalty (GBP).**

- a. The gravity-based penalty (GBP) for each violation shall be determined by combining the severity assessment and the final probability assessment.
- b. GBP is an unreduced penalty and is calculated in accordance with the procedures below.
  - *NOTE: Throughout the FOM when the term “unreduced penalty” is used, it is the same as GBP.*

4. **Serious Violation & GBP.**

- a. The gravity of a violation is defined by the GBP:
  - A **high gravity** violation is one with a GBP of \$5,000 or greater.
  - A **moderate gravity** violation is one with a GBP of \$2,000, \$2,500 or \$3,500.
  - A **low gravity** violation is one with a GBP of \$1,500.
- b. The highest gravity classification (high severity and greater probability) shall normally be reserved for the most serious violative conditions, such as those situations involving danger of death or extremely serious injury or illness.
- c. If the Administrator determines that it is appropriate to achieve the necessary deterrent effect, a GBP of \$7,000 may be proposed instead of \$5,000. Such discretion should be exercised based on the facts of the case. The reasons for this determination shall be fully explained in the case file.
- d. For serious violations, the GBP shall be assigned on the basis of the following scale in Table 6-2:

$$\text{Severity} + \text{Probability} = \text{GBP}$$

**Table 6-2: Serious Violations**

Severity	Probability	GBP	Gravity	IMIS Code
High	Greater	\$5,000 (or \$7,000)	High	10
Medium	Greater	\$3,500	Moderate	5

Low	Greater	\$2,500	Moderate	5
High	Lesser	\$2,500	Moderate	5
Medium	Lesser	\$2,000	Moderate	5
Low	Lesser	\$1,500	Low	1

5. **Other-Than-Serious Violations & GBP.**

- a. For other-than-serious safety and health violations, there is only minimal severity.
- b. If the Administrator determines that it is appropriate to achieve the necessary deterrent effect, a GBP of \$7,000 may be proposed. Such discretion should be exercised based on the facts of the specific case. The reasons for this determination shall be fully explained in the case file.

**Table 6-3: Other-Than-Serious Violations**

<b>Severity</b>	<b>Probability</b>	<b>GBP</b>
<b>Minimal</b>	<b>Greater</b>	<b>\$1,000 - \$7,000</b>
<b>Minimal</b>	<b>Lesser</b>	<b>\$0</b>

6. **Exception to GBP Calculations.**

For some cases, a GBP may be assigned without using the severity and the probability assessment procedures outlined in this section when these procedures cannot appropriately be used. In such cases, the assessment assigned and the reasons for doing so shall be fully explained in the case file.

7. **Egregious Cases.**

In egregious cases, violation-by-violation penalties are applied. Such cases shall be handled in accordance with CPL 02-00-080, *Handling of Cases to be Proposed for Violation-By-Violation Penalties*, dated October 21, 1990. Penalties calculated under this policy shall not be proposed without the concurrence of the Labor Commissioner and the Legal Staff.

8. **Gravity Calculations for Combined or Grouped Violations.**

Combined or grouped violations will be considered as one violation with one GBP. The following procedures apply to the calculation of penalties for combined and grouped violations:

*NOTE: Multiple violations of a single standard may be **combined** into one citation item. When a hazard is identified which involves interrelated violations of different standards, the violations may be **grouped** into a single item.*

**a. Combined Violations.**

- The severity and probability assessments for combined violations shall be based on the instance with the highest gravity. It is not necessary to complete the penalty calculations for each instance or sub item of a combined or grouped violation once the instance with the highest gravity is identified.

**b. Grouped Violations.**

The following shall be adhered to:

- **Grouped Severity Assessment**

There are two considerations for calculating the severity of grouped violations:

- The severity assigned to the grouped violation shall be no less than the severity of the most serious reasonably predictable injury or illness that could result from the violation of any single item; AND
- If the injury or illness that is reasonably predictable from the grouped items is more serious than that from any single violation item, the more serious injury or illness shall serve as the basis for the calculation of the severity factor.

- **Grouped Probability Assessment**

There are two factors for calculating the probability of grouped violations:

- The probability assigned to the grouped violation shall be no less than the probability of the item which is most likely to result in an injury or illness; AND



- If the overall probability of injury or illness is greater with the grouped violation than with any single violation item, the greater probability of injury or illness shall serve as the basis for the calculation of the probability assessment.

**B. Penalty Reduction Factors.**

**1. General.**

- a. Penalty reductions may exceed 100 percent, depending upon the employer's "size" (number of employees), "good faith," and "history of previous violations."
  - A maximum of 60 percent (80 percent for serious willful violations) reduction is permitted for **size**;
  - A maximum of 25 percent reduction for **good faith**; and
  - 10 percent reduction may be given for **history**.
- b. However, no penalty reduction can be more than 100 percent of the initial assessment. Since these reduction factors are based on the general character of an employer's safety and health performance, they shall be calculated only once for each employer.
- c. After the classification (as serious or other-than-serious) and the gravity-based penalty have been determined for each violation, the penalty reduction factors (for size, good faith, history) shall be applied subject to the following limitations:
  - Penalties proposed for violations classified as **repeated** shall be reduced only for size.
  - Penalties proposed for violations classified as **willful**, shall be reduced only for size and history.
  - Penalties proposed for **serious** violations classified as high severity/greater probability **shall be reduced only for size and history**.

**2. Size Reduction.**

- a. A maximum penalty reduction of 60 percent is permitted for small employers (80 percent for serious willful violations, see Table 6-6). “Size of employer” shall be calculated on the basis of the maximum number of employees of an employer at **all** workplaces nationwide, including State Plan States, at any one time during the previous 12 months.
- b. The rates of reduction to be applied are as follows.

<u>Employees</u>	<u>Percent reduction</u>
1-25	60
26-100	40
101-250	20
251 or more	None

- c. When an employer with 1-25 employees has one or more serious violations of high gravity or a number of serious violations of moderate gravity indicating a lack of concern for employee safety and health, the CSHO may recommend that only a partial reduction in penalty shall be permitted for size. If the Administrator approves the partial reduction, the justification is to be fully explained in the case file.

### 3. **Good Faith Reduction.**

A penalty reduction is permitted in recognition of an employer’s effort to implement an effective safety and health management system in the workplace. The following apply to reductions for good faith:

#### a. **Reduction Not Permitted.**

- No reduction shall be given for **high gravity serious violations**.
- No reduction shall be given if a **willful violation** is found. Additionally, where a willful violation has been documented, no reduction for good faith can be applied to **any** of the violations found during the same inspection.
- No reduction shall be given for **repeated violations**. If a repeated violation is found, no reduction for good faith can be applied to **any** of the violations found during the same inspection.

- No reduction shall be given if a **failure to abate violation** is found during an inspection. No good faith reduction shall be given for any violation in the inspection in which the FTA was found.
- No reduction shall be given to employers being cited under abatement verification for any IAC 875-3.19 rule.
- No reduction shall be given if the employer has **no safety and health management system**, or if there are **major deficiencies** in the program.

b. **Twenty-Five Percent Reduction.**

- A 25 percent reduction for “good faith” normally requires a written safety and health management system. In exceptional cases, CSHOs may recommend a full 25 percent reduction for employers with 1-25 employees who have implemented an effective safety and health management system, but has not reduced it to writing.

To qualify for this reduction, the employer’s safety and health management system must provide for:

- Appropriate management commitment and employee involvement;
- Worksite analysis for the purpose of hazard identification;
- Hazard prevention and control measures;
- Safety and health training; and
- Where **young persons** (i.e., less than 18 years old) are employed, the CSHO’s evaluation must consider whether the employer’s safety and health management system appropriately addresses the particular needs of such employees, relative to the types of work they perform and the potential hazards to which they may be exposed.
- Where **persons who speak limited or no English** are employed, the CSHO’s evaluation must consider whether the employer’s safety and health management

system appropriately addresses the particular needs of such employees, relative to the types of work they perform and the potential hazards to which they may be exposed.

- *NOTE: One example of an effective safety and health management system is given in Safety and Health Program Management Guidelines; Issuance of Voluntary Guidelines (Federal Register, January 16, 1989 (54 FR 3904)).*

**c. Fifteen Percent Reduction.**

A 15 percent reduction for good faith shall normally be given if the employer has a documented and effective safety and health management system, with only incidental deficiencies.

**EXAMPLE 6-2:** An acceptable program should include minutes of employee safety and health meetings, documented employee safety and health training sessions, or any other evidence of measures advancing safety and health in the workplace.

**d. Reserved**

**e. Allowable Percentages**

Only the percentages 15% and 25% may be used to reduce penalties due to the employer's good faith.

**4. History Reduction.**

**a. Allowable Percent.**

A reduction of 10 percent may be given to employers who have not been cited by the state for any serious, willful, or repeated violations in the prior three years. If the Administrator decides to not allow the 10 percent reduction in penalty the reason for not allowing the reduction must be documented in the case file.

**b. Time Limitation and Final Order.**

The three-year history of no prior State citations shall be calculated from the opening conference date of the current inspection. Only citations that have become a final order of the Employment Appeal Board within the three years immediately before the opening conference date shall be considered.

**c. Reduction Will Not be Given.**

- For a repeated violation, or
- To employers being cited under abatement verification for any IAC 875-3.19 violations.

**5. Total Reduction.**

The total reduction will normally be the sum of the reductions for each factor. Table 6-4 provides an overview of the percent of penalty reductions applicable to serious, other-than-serious, and repeated violations.

**6. Penalty Table.**

Table 6-4 may be used for determining appropriate reduced penalties for serious and other-than-serious violations.

**Table 6-4: Penalty Table**

<b>Percent Reduction</b>	<b>Penalty in Dollars</b>							
0	\$1,000	\$1,500	\$2,000	\$2,500	\$3,000	\$3,500	\$5,000	\$7,000
10	\$900	\$1,350	\$1,800	\$2,250	\$2,700	\$3,150	\$4,500	\$6,300
15	\$850	\$1,275	\$1,700	\$2,125	\$2,550	\$2,975	\$4,250*	\$5,950*
20	\$800	\$1,200	\$1,600	\$2,000	\$2,400	\$2,800	\$4,000	\$5,600
25	\$750	\$1,125	\$1,500	\$1,875	\$2,250	\$2,625	\$3,750*	\$5,250*
30	\$700	\$1,050	\$1,400	\$1,750	\$2,100	\$2,450	\$3,500	\$4,900
35	\$650	\$975	\$1,300	\$1,625	\$1,950	\$2,275	\$3,250*	\$4,550*
40	\$600	\$900	\$1,200	\$1,500	\$1,800	\$2,100	\$3,000	\$4,200
45	\$550	\$825	\$1,100	\$1,375	\$1,650	\$1,925	\$2,750*	\$3,850*
50	\$500	\$750	\$1,000	\$1,250	\$1,500	\$1,750	\$2,500	\$3,500
55	\$450	\$675	\$900	\$1,125	\$1,350	\$1,575	\$2,250*	\$3,150*
60	\$400	\$600	\$800	\$1,000	\$1,200	\$1,400	\$2,000	\$2,800
65	\$350	\$525	\$700	\$875	\$1,050	\$1,225	\$1,750*	\$2,450*
70	\$300	\$450	\$600	\$750	\$900	\$1,050	\$1,500	\$2,100
75	\$250	\$375	\$500	\$625	\$750	\$875	\$1,250*	\$1,750*

85	\$150	\$225	\$300	\$375	\$450	\$525	\$750*	\$1,050*
95	\$100**	\$100**	\$100	\$125	\$150	\$175	\$250*	\$350*

\* Starred figures represent penalty amounts that would not normally be proposed for high gravity serious violations because no reduction for good faith is made in such cases.

They may occasionally be applicable for other-than-serious violations where the Administrator has determined a high unreduced penalty amount to be warranted.

\*\* Administratively, Iowa OSHA will not issue a penalty less than \$100 for a violation.

#### **IV. Effect on Penalties if Employer Immediately Corrects.**

Appropriate penalties will be proposed with respect to an alleged violation even though, after being informed of the violation by the CSHO, the employer immediately corrects or initiates steps to abate the hazard.

##### **A. Reserved**

##### **B. Reserved**

1. Reserved

2. Reserved

3. Reserved

4. Reserved

5. Reserved

6. Reserved

##### **C. Reserved**

1. Reserved

2. Reserved

3. Reserved

##### **D. Reserved**

1. Reserved

2. Reserved

**Table 6-5: Reserved**


## **V. Repeated Violations.**

### **A. General.**

1. Each repeated violation shall be evaluated as serious or other-than-serious, based on current workplace conditions, and not on hazards found in the prior case.
2. A Gravity-Based Penalty (GBP) shall then be calculated for repeated violations based on facts noted during the current inspection.
3. Only the reduction factor for size, appropriate to the facts at the time of the reinspection, shall be applied.

*NOTE: Chapter 88.14 of the Iowa Code provides that an employer who repeatedly violates the Act may be assessed a civil penalty of not more than \$70,000 for each violation.*

### **B. Penalty Increase Factors.**

The amount of any increase to a proposed penalty for repeated violations shall be determined by the size of the employer's business.

#### **1. Small Employers.**

For employers with 250 or fewer employees nationwide, the GBP shall be multiplied by a factor of 2 for the first repeated violation and multiplied by 5 for the second repeated violation. The GBP may be multiplied by 10 in cases where the Administrator determines that it is necessary to achieve the deterrent effect. The reasons for imposing a high multiplier factor shall be explained in the file.

#### **2. Large Employers.**

For employers with more than 250 employees nationwide, the GBP shall be multiplied by a factor of **5** for the first repeated violation and, by **10** for the second repeated violation.

### **C. Other-than-Serious, No Initial Penalty.**

For a repeated other-than-serious violation that otherwise would have no initial penalty, a GBP penalty of \$200 shall be proposed for the first repeated violation, \$500 for the second repeated violation, and \$1,000 for a third repetition.

*NOTE: These penalties shall not be subject to the Penalty Increase factors as discussed in Paragraph V.B. of this chapter.*

**D. Regulatory Violations.**

1. For calculating the GBP for regulatory violations, see Paragraph III.A.5. and Section X.
2. For repeated instances of regulatory violations, the initial penalty (of current inspection) shall be multiplied by 2 for the first repeated violation and multiplied by 5 for the second repeated violation. If the Administrator determines that it is necessary to achieve the proper deterrent effect, the initial penalty may be multiplied by 10.

**VI. Willful Violations.**

Chapter 88.14 (1) of the Code provides that an employer who willfully violates the Act may be assessed a civil penalty of not more than \$70,000 for each violation, but not less than \$5,000 for each violation. See *Minimum Penalties* at Paragraph II.C. of this chapter.

**A. General.**

1. Each willful violation shall be classified as serious or other-than-serious.
2. There shall be no reduction for good faith.
3. In no case shall the proposed penalty for a willful violation (serious or other-than-serious) after reductions be less than \$5,000.

**B. Serious Willful Penalty Reductions.**

The reduction factors for size for serious willful violations shall be applied as shown in the following chart. This chart helps minimize the impact of large penalties for small employers with 50 or fewer employees. However, in no case shall the proposed penalty be less than the statutory minimum, i.e., \$5,000 for these employers.



*NOTE: For violations that are not serious willful, use the size chart in Paragraph III.B.2.*

<b>Employees</b>	<b>Percent reduction</b>
10 or fewer	80
11-20	60
21-30	50
31-40	40
41-50	30
51-100	20
101-250	10
251 or more	0

The reduction factor for history may be applied. If the Administrator decides to not allow the 10 percent reduction in penalty the reason for not allowing the reduction must be documented in the case file.

The proposed penalty shall then be determined from Table 6-6.

**Table 6-6: Penalties to be Proposed for Serious Willful Violations**

<b>Total percent reduction for size and/or history</b>	<b>High Gravity</b>	<b>Moderate Gravity</b>	<b>Low Gravity</b>
0%	\$70,000	\$55,000	\$40,000
10%	\$63,000	\$49,500	\$36,000
20%	\$56,000	\$44,000	\$32,000
30%	\$49,000	\$38,500	\$28,000
40%	\$42,000	\$33,000	\$24,000
50%	\$35,000	\$27,500	\$20,000
60%	\$28,000	\$22,000	\$16,000
70%	\$21,000	\$16,500	\$12,000
80%	\$14,000	\$11,000	\$8,000
90%	\$7,000	\$5,500	\$5,000

**C. Willful Regulatory Violations.**

1. For calculating the GBP for regulatory violations, see Paragraph III.A.5. and Section X for other-than-serious violations.
2. In the case of regulatory violations that are determined to be willful, the GBP penalty shall be multiplied by 10. In no event

shall the penalty, after reduction for size and history, be less than \$5,000.

## **VII. Penalties for Failure to Abate.**

### **A. General.**

1. Failure to Abate penalties shall be proposed when:
  - a. A previous citation issued to an employer has become a final order of the Employment Appeal Board; and
  - b. The condition, hazard or practice found upon re-inspection is the same for which the employer was originally cited and has never been corrected by the employer (i.e., the violation was continuous).
2. The citation has to have become a final order of the Employment Appeal Board. Citations become a final order of the Board when the abatement date for that item passes, if the employer has not filed a notice of contest prior to that abatement date. See IAC 875-3.19(2).
3. See Chapter 15, Legal Issues, for information on determining final dates of uncontested citations, settlements and Employment Appeal Board decisions.

### **B. Calculation of Additional Penalties.**

#### **1. Unabated Violations.**

A GBP for unabated violations is to be calculated for failure to abate a serious or other-than-serious violation on the basis of the facts noted upon reinspection. This recalculated GBP, however, shall not be less than that proposed for the item when originally cited.

- a. **EXCEPTION:** When the CSHO believes and documents in the case file that the employer has made a good faith effort to correct the violation and had an objective reasonable belief that it was fully abated, the Administrator may reduce or eliminate the daily proposed penalty.
- b. For egregious cases see CPL 02-00-080, Handling of Cases to be Proposed for Violation-By-Violation Penalties, dated October 21, 1990.

2. **No Initial Proposed Penalty.**

In instances where no penalty was initially proposed, an appropriate penalty shall be determined after consulting with the Administrator. In no case shall the GBP be less than \$1,000 per day.

3. **Size Only Permissible Reduction Factor.**

Only the reduction factor for size – based upon the circumstances noted during the reinspection – shall be applied to arrive at the daily proposed penalty.

4. **Daily Penalty Multiplier.**

The daily proposed penalty shall be multiplied by the number of calendar days that the violation has continued unabated, except as provided below:

- a. The number of days unabated shall be counted from the day following the abatement date specified in the citation or the final order. It will include all calendar days between that date and the date of reinspection, excluding the date of reinspection.
- b. Normally the maximum total proposed penalty for failure to abate a particular violation shall not exceed **30** times the amount of the daily proposed penalty.
- c. At the discretion of the Administrator, a lesser penalty may be proposed. The reasoning for the lesser penalty shall be fully explained (e.g., achievement of an appropriate deterrent effect) in the case file.
- d. If a penalty in excess of the normal maximum amount of **30** times the amount of the daily proposed penalty is deemed necessary by the Administrator to deter continued non-abatement, the case shall be treated pursuant to the violation-by-violation (egregious) penalty procedures established in CPL 02-00-080, *Handling of Cases to be Proposed for Violation-By-Violation Penalties*, dated October 21, 1990.

C. **Partial Abatement.**

1. When a citation has been partially abated, the Administrator may authorize a reduction of 25 to 75 percent to the amount of the proposed penalty calculated as outlined above.
2. When a violation consists of a number of instances and the follow-up inspection reveals that only some instances of the violation have been corrected, the additional daily proposed penalty shall take into consideration the extent of the abatement efforts.

**EXAMPLE 6-3:** Where three out of five instances have been corrected, the daily proposed penalty (calculated as outlined above, without regard to any partial abatement) may be reduced by 60 percent.

## **VIII. Violation-by-Violation (Egregious) Penalty Policy.**

### **A. Penalty Procedure.**

Each instance of noncompliance shall be considered a separate violation with individual proposed penalties for each violation. This procedure is known as the egregious or violation-by-violation penalty procedure.

### **B. Case Handling.**

Such cases shall be handled in accordance with CPL02-00-080, *Handling of Cases to be Proposed for Violation-By-Violation Penalties*, dated October 21, 1990.

### **C. Calculation of Penalties.**

Penalties calculated using the violation-by-violation policy shall not be proposed without the concurrence of the Labor Commissioner.

## **IX. Significant Enforcement Actions.**

### **A. Definition.**

A significant enforcement action (aka significant case) is one which results from an investigation in which the total proposed penalty is \$100,000 or more.

### **B. Multi-employer Worksites.**

Several related inspections involving the same employer, or involving more than one employer in the same location (such as multi-employer worksites) and submitted together, may also be considered to be a

significant enforcement action if the total aggregate penalty is \$100,000 or more.

**C. Reserved**

1. Reserved
2. Reserved

**D. Labor Commissioner Concurrence.**

The Labor Commissioner's concurrence is normally required for issuing citations in significant enforcement cases.

**X. Penalty and Citation Policy for Iowa Administrative Code 875 Chapter 3 and 1904 Regulatory Requirements.**

Chapter 88.14(9) of the Code provides that any employer who violates any of the posting requirements shall be assessed a civil penalty of up to \$7,000 for each violation (this includes recordkeeping violations). The following policy and procedure document must also be consulted for an in-depth review of these policies: CPL 02-00-111, Citation Policy for Paperwork and Written Program Requirement Violations, issued November 27, 1995. Gravity-Based Penalties (GBPs) for regulatory violations, including posting requirements, shall be reduced for size and history (excluding willful violations, see Chapter 4, Section V, Willful Violations).

**A. Posting Requirements Under IAC 875 Chapter 3.**

Penalties for violation of posting requirements shall be proposed as follows:

**1. Failure to Post the OSHA Notice (Poster) – IAC 875 3.1(1).**

A citation for failure to post the OSHA Notice is warranted if:

- a. The pattern of violative conditions for a particular establishment demonstrates a consistent disregard for the employer's responsibilities under the Chapter 88 of the Iowa Code; AND
- b. Interviews show that employees are unaware of their rights under the Act; OR
- c. The employer has been previously cited or advised by OSHA of the posting requirement.

If the criteria above are met and the employer has not displayed (posted) the notice furnished by the Occupational Safety and Health Administration or Iowa OSHA as prescribed in IAC 875 Chapter 3.1(1), an other-than-serious citation shall normally be issued. The GBP for this alleged violation shall be \$1,000.

**2. Failure to Post a Citation – Chapter 88.7(2).**

- a. If an employer received a citation that was not posted as prescribed in 88.7(2), an other-than-serious citation shall normally be issued. The GBP shall be \$3,000.
- b. For information regarding the OSHA-300A form, see CPL 02-00-135, Recordkeeping Policies and Procedures Manual, December 30, 2004.

**B. Advance Notice of Inspection – Chapter 88.14(6).**

When an employer has received advance notice of an inspection and fails to notify the authorized employee representative as required by IAC 875 Chapter 3.4(2), an other-than-serious citation shall be issued. The violation shall have a GBP of \$2,000.

**C. Abatement Verification Regulation Violations – Iowa Administrative Code 875 Chapter 3.19.**

**1. General.**

- a. The penalty provisions of 88.7 and 88.14 of the Iowa Code apply to all citations issued under this regulation. Only the reduction factor for size shall apply when assessing penalties.
- b. No “Good Faith” or “History” reduction shall be given to employers when proposing penalties for any IAC 875-3.19 violations. Only the reduction factor for “Size” shall apply.
- c. See Chapter 7, Post-Citation Inspection Procedures and Abatement Verification, for detailed guidance.

**2. Penalty for Failing to Certify Abatement.**

- a. A penalty for failing to submit abatement certification documents, IAC 875 Chapter 3.19(3), shall be \$1,000, reduced only for size.

- b. A penalty for failure to submit abatement verification documents will not exceed the penalty for the entire original citation.
- c. No “Good Faith” or “History” reductions shall be given to employers cited for failure to certify abatement.

3. **Penalty for Failing to Notify and Tagging.**

Penalties for not notifying employees and tagging movable equipment IAC 875 3.19(7) and 3.19 (9) will follow the same penalty structure (GBP of \$3,000) as for Failure to Post a Citation.

D. **Injury and Illness Records and Reporting under Part 1904.**

- 1. Part 1904 violations are always other-than-serious.
- 2. Repeated and Willful penalty policies in paragraphs V.D. and VI.C., respectively, of this Chapter, may be applied to recordkeeping violations.
- 3. OSHA’s egregious penalty policy may be applied to recordkeeping violations. See CPL 02-00-080, *Handling of Cases to be Proposed for Violation-By-Violation Penalties*, October 21, 1990.
- 4. See CPL 02-00-135, *Recordkeeping Policies and Procedures Manual*, dated December 30, 2004; specifically Chapter 2, Section II, *Inspection and Citation Procedures*.

XI. **Failure to Provide Access to Medical and Exposure Records – §1910.1020.**

A. **Proposed Penalties.**

If an employer is cited for failing to provide access to records as required under §1910.1020 for inspection and copying by any employee, former employee, or authorized representative of employees, a GBP of \$1,000 shall normally be proposed for each record (i.e., either medical record or exposure record, on an individual employee basis). A maximum GBP of \$7,000 may be proposed for such violations. See CPL 02-02-072, *Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records*, dated August 22, 2007.

**EXAMPLE 6-4:** If the evidence demonstrates that an authorized employee representative requests both exposure and medical records

for three employees and the request was denied by the employer, a citation would be issued for six instances (i.e., one medical record and one exposure record (total two) for each of three employees) of a violation of §1910.1020, with a GBP of \$6,000.

**B. Use of Violation-by-Violation Penalties.**

The above policy does not preclude the use of violation-by-violation or per employee penalties where higher penalties are appropriate. See CPL 02-00-080, Handling of Cases to be Proposed for Violation-By-Violation Penalties, October 21, 1990.

**XII. Penalties.**

**A. Chapter 88 Iowa Code.**

The Code provides for penalties in the following cases:

1. Willful violation of an OSHA standard, rule, or order causing the death of an employee; 88.14(1) & (5);
2. Giving unauthorized advance notice; 88.14(6);
3. Knowingly giving false information; 88.14(7); and
4. Reserved.

**B. Courts.**

Penalties are imposed by the courts after trials and not OSHA or the Employment Appeal Board.

**XIII. Handling Monies Received from Employers.**

**A. Responsibility of the Administrator.**

Pursuant to its statutory authority, it is OSHA policy to attempt to collect all Iowa OSHA penalties owed to the State. The Administrator, with the assistance of the Legal Staff is responsible for:

1. Informing employers of OSHA's debt collection procedures;
2. Collecting assessed penalties from employers;
3. Reporting penalty amounts collected and those due;



4. Reserved;
5. Referring cases with uncollected penalties to the Legal Staff;
6. Reserved; and
7. Reviewing the bankruptcy logs available on the shared drive.

**B. Receiving Payments.**

The Administrator shall be guided by the following with regard to penalty payments:

**1. Methods of Payment.**

Employers assessed penalties shall remit the total payment to the Office by certified check, personal check, company check, postal money order, bank draft or bank money order, payable to the “Division of Labor Services – Iowa OSHA. Payment in cash shall not be accepted. Upon request of the employer and for good cause, alternate methods of payment are permissible, such as payments in installments.

**2. Identifying Payment.**

When payment is received a photocopy of the check is made, this photocopy and inspection identification information and date received information is forwarded to the IOSH Secretary.

**3. Adjustment to Payments.**

The following adjustments shall be made prior to depositing the payment

- a. If the payment instrument is not dated, the date received shall be entered as the date of payment.
- b. If the payment instrument has differing numeric and written amounts, the written amount shall be credited and the instrument deposited. If the written amount is obviously incorrect or differs from the amount referenced in the accompanying correspondence, the payment instrument shall be returned to the employer via certified mail for correction.
- c. Reserved

- d. If the payment instrument includes the notation, "Payment in Full," whether or not the notation is correct, the payment shall be deposited.
- e. If the payment instrument is unsigned, the payment shall be deposited.
- f. If an employer mistakenly makes the payment payable to an official of OSHA by name or to the Department instead of OSHA, it shall be endorsed as follows:
  - Postal Money Orders – follow instruction on reverse of the money order.
  - All others – enter on reverse:

Pay to the order of Treasurer State of Iowa – Iowa  
Workforce Development

\_\_\_\_\_  
(Typewritten name of payee) (Signature)

4. **Reserved**

- a. Reserved
- b. Reserved
- c. Reserved

5. **Endorsing Payments.**

All payment instruments shall be endorsed as follows:

Pay to the Order of  
Treasurer State of Iowa  
Iowa Workforce Development

6. **Depositing Payments.**

All payments shall be kept in a safe place and, unless otherwise indicated, transmitted daily in accordance with agency and Financial Management procedures.

7. **Records.**

A copy of the penalty payment instrument shall be included in the case file. Additional accounting records shall also be included in the case file in accordance with current procedures.

**C. Refunds.**

In cases of later penalty modifications by OSHA or by the Employment Appeal Board or a Court, refunds to the employer shall be made by the Division of Labor through Financial Management.

**XIV. Debt Collection Procedures.**

**A. Reserved**

**B. Time Allowed for Payment of Penalties.**

The date when penalties become due and payable depends on whether or not the employer contests.

**1. Uncontested Penalties.**

When citations and/or proposed penalties are uncontested, the penalties are due and payable 15 working days following the employer's receipt of the Citation and Notification of Penalty or, in the case of Informal Settlement Agreements, 15 working days after the date of the last signature unless a later due date for payment of penalties is agreed upon in the settlement.

**2. Contested Penalties.**

When citations and/or proposed penalties are contested, the date penalties are due and payable will depend upon whether the case is resolved by a settlement agreement, an administrative law judge decision, an Employment Appeal Board decision, or a court judgment. See Chapter 15, Section XIII., Citation Final Order Dates, for additional information.)

*NOTE: Reserved*

**3. Partially Contested Penalties.**

When only part of a citation and/or a proposed penalty is contested, the due date for payment as stated in paragraph XIV.B.1., Uncontested Penalties, shall be used for the uncontested

items and the due date stated in Paragraph XIV.B.2., Contested Penalties, for the contested items.

*NOTE: This provision notwithstanding, formal debt collection procedures will not be initiated in partially contested cases until a final order for the outstanding citation items has been issued.*

C. **Notification Procedures.**

It is OSHA policy to notify employers (the "Notice") that debts are payable and due, and to inform them of OSHA's debt collection procedures.

D. **Notification of Overdue Debt.**

The Administrator shall send a demand letter to the employer when the debt has become delinquent and shall retain a copy of the demand letter in the case file. A debt becomes delinquent **30 calendar days after the due date**, which is the same as the **final order date** as stated in Chapter 15, Section XIII., Citation Final Order Dates.

1. **Uncontested Case with Penalties.**

If payment of any applicable penalty is not received within 30 calendar days after the date of the expiration of the 15 working day contest period, or 15 working days after the date of the last signature (unless a later due date for payment of penalties is agreed upon in the settlement) if an Informal Settlement Agreement has been signed, a demand letter shall be mailed.

2. **Contested Case with Penalties.**

If payment of any applicable penalty is not received within 60 calendar days after the Employment Appeal Board's **Final Order** approving a Formal Settlement Agreement, or no appeal of the case has been filed by either OSHA or the employer, the Administrator shall either send a demand letter or a letter notifying the employer that the OSHA fine is past due.

3. **Exceptions to Sending the Demand Letter.**

The demand letter will not be sent in the following circumstances:

- a. The employer is currently making payments under an approved installment plan or other satisfactory payment arrangement.

*NOTE: If the employer enters into a **written** plan establishing a set payment schedule within one calendar month of the due date, but subsequently fails to make a payment within one calendar month of its scheduled due date, a payment default letter shall be sent to the employer. If the employer fails to respond satisfactorily to that letter within one month, the unpaid portion of the debt shall be handled in accordance with Paragraph XIV.F., Assessment Procedures.*

- b. The employer has partially contested the case (even if the penalty has not been contested). In such circumstances a demand letter shall not be sent until a final order has been issued.

**E. Assessment of Additional Charges.**

**1. Interest.**

Interest on the unpaid principal amount shall be assessed on a monthly basis at the current annual rate charged by the Court. Interest is not assessed if an acceptable repayment schedule has been established in a written plan by the due date.

**2. Reserved**

**3. Reserved**

**F. Assessment Procedures.**

If the penalty has not been paid by the delinquent date (i.e., within one calendar month of the due date), the Legal Staff shall implement the following procedures:

1. Interest shall be assessed at the current interest rate on the unpaid balance of the debt. The rate of interest shall remain fixed for the duration of the debt.

*NOTE: Reserved*

2. The demand letter shall be sent to the employer requesting immediate payment of the debt. The demand letter shall show the total amount of the debt, including the unpaid penalty amount.
3. Employers may respond to the demand letter in several ways:

- a. The entire debt may be paid. In such cases no further collection action is necessary.
    - b. A repayment plan may be submitted or offered; after a set payment schedule has been approved by the Legal Staff, no additional charges shall be levied against the debt as long as payments are timely made in accordance with the approved schedule. See note under Paragraph XIV.D.3.a. of this chapter, *Exceptions to Sending Demand Letter*. If payments are not made on schedule, the unpaid portion of the debt shall be treated in accordance with Paragraph XIV.F..
    - c. A partial payment may be made; the unpaid portion of the debt shall be treated in accordance with Paragraph XIV.F. of this chapter.
  4. If any portion of the debt remains unpaid after one calendar month from the time the demand letter was sent to the employer, the Legal Staff shall institute one of the following:
    - a. Outstanding debts less than \$ 500 may be written off.
    - b. If the employer made a payment after receiving the demand, letter, the Legal Staff may:
      - Send a receipt letter or contact the employer to request the balance due on the debt
    - c. Reserved
  5. Reserved
  6. Reserved
  7. Reserved
  8. The responsibility for closing the case remains with the Legal Staff. Once final collection action has been completed, the case may be closed whenever appropriate.
- G. **Reserved**
1. Reserved
  2. Reserved

3. Reserved

4. Reserved

**H. Uncollectible Penalties.**

There may be cases where a penalty cannot be collected, regardless of any action that has been or may be undertaken. Examples might be when a demand letter is not deliverable, a company is no longer in business and has no successor, or the employer is bankrupt. The database shall be updated following current IMIS procedures to reflect the most recent action.

**I. Debt Collection Procedures.**

1. **Reserved**

2. **Reserved**

3. **Referral to the Offset Program**

Referral to the Department of Revenue and Finance's Offset Program where collection is done by offset from payments due the debtor by any State agency. The Legal Staff shall fill out the form on the database and put a copy in the file for the Offset.

a. Reserved

b. Reserved

c. Reserved

4. **Reserved**

5. **Reserved**

6. **Reserved**